HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 865 (S/S) 2005

Harish Puri S/o late Hayat Puri,
R/o Post Office Bhatrojkhan,
District Nainital. -----Petitioner.

Vs.

1. State of Uttaranchal through Secretary,
   P.W.D., Uttaranchal Sashan, Dehradun,
2. Superintendent Engineer,
   22nd Circle, P.W.D., Nainital
3. Executive Engineer,
   Construction Division , P.W.D. Nainital. --Respondents.

Sri Tumul Nailwal, learned counsel for the petitioner.
Learned Standing Counsel for respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Tumul Nailwal, learned counsel for the petitioner and learned Standing Counsel for the respondents.

By means of this writ petition, the petitioner has prayed to issue a writ, order or direction in the nature of mandamus commanding the respondents to regularize the services of the petitioner as Class IV employee on the post of 'Beldar' and to pay him all consequential benefits. He has further prayed to issue direction to the respondents to pay the pay-scale to the petitioner which is admissible for Class IV employees.

Brief facts of the case are that the petitioner's father was appointed as 'Beldar' in Public Works Department on monthly salary basis w.e.f. 01.02.1989. In pursuance of the Circular dated 12.02.1990 issued by the Chief Engineer, P.W.D., the salary of father of the petitioner was settled on monthly basis on the post of 'Beldar' in the pay-scale of 750-12-870-e.b.-14-940 and was posted at Betalghat (Bhatrojkhan Road) vide order dated

08.01.1991. The petitioner has submitted that his father was expired in the year 1999 and at the time of his death he was under the employment of respondent no. 3. After the death of his father, the petitioner approached to the concerned authorities for providing him appointment under dying-in-harness Rules and accordingly vide order dated 15.11.2000, the respondent no. 3 appointed the petitioner as 'Beldar' on temporary basis under Dying-in-Harness Rule w.e.f. 20.11.2000. In pursuance of the aforesaid appointment order, the petitioner joined his duties on 22.11.2000. Though the petitioner was appointed under dying-in-harness Rules, but he was provided appointment under Work-charge Establishment, therefore, the petitioner represented before the respondents on 02.03.2002 that since petitioner's appointment was under dying-in-harness Rules, he should have been given regular appointment and not a temporary appointment under Work-charge Establishment. When the respondents took no action for providing regular appointment to the petitioner, he was compelled to the file present writ petition.

Submission of the petitioner is that since the petitioner has been appointed under dying-in-harness, he should have been given regular appointment. Counsel for the petitioner has placed reliance on the judgment of this Court passed in writ petition no. 91(ss)2002 reported in 2005 (1) Uttaranchal Decisions, page 379 Bhaguli Devi vs. State of Uttaranchal and ors. and on the judgment of this Court in writ petition no. 1412 (SS)2004 Smt. Nandi Devi vs. State of Uttaranchal and ors.

It is not disputed that the petitioner's father was regular employee of Public Works Department and he died while in service. It is also not disputed that the petitioner has been provided appointment by the respondents on the post of 'Beldar' vide order dated 15.11.2000 under dying-in-harness

Rules. It is well settled law that appointment provided under dying-in-harness shall be treated as permanent appointment and not as temporary one. In spite of repeated time granted to the respondents, no counter affidavit has been filed by them. In absence of counter affidavit learned Standing Counsel could not show any reason as to why the petitioner was not appointed on regular basis despite of the fact that the petitioner was appointed under dying-in-harness Rules.

I find force in the submission of learned counsel for the petitioner.

Since the petitioner was appointed under dying-in-harness Rules, his appointment should have been treated on regular basis. In the circumstances and for the reasons stated above, the writ petitioner is allowed. The respondents are directed to treat the services of the petitioner under regular establishment as regular and not under the work charge establishment. No order as to costs.

(M.M. Ghildiyal, J.)

October 26, 2005:
NCM